



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MOP/158471

PRELIMINARY RECITALS

Pursuant to a petition filed June 19, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on August 07, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly determined that the Petitioner was overpaid BadgerCare+ benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

█
█

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Pamela Hazley, HSPC Sr.
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On May 12, 2014, someone called DHS's fraud tip line to report the Petitioner was married and living with her husband since 2005. (Exhibit R52)

3. On June 4, 2014, Milwaukee Enrollment Services (the agency) sent the Petitioner and her husband, [REDACTED], a manual Medicaid Overpayment Notice, indicating that they were overpaid benefits, in the amount of \$21,095.00 for the period of July 1, 2008 through June 30, 2014. (Exhibit R18)

4. On June 5, 2014, the agency sent Petitioner 12 automated Medical Assistance / BadgerCare / BadgerCare Plus Overpayment Notices for the following claims:

Claim # [REDACTED] for \$2,751.56 for the period of 07/01/2008 to 06/30/2009

Claim # [REDACTED] for \$505.00 for the period of 07/01/2008 to 06/30/2009

Claim # [REDACTED] for \$2,646.36 for the period of 07/01/2009 to 06/30/2010

Claim # [REDACTED] for \$400.00 for the period of 07/01/2009 to 06/30/2010

Claim # [REDACTED] for \$2,022.43 for the period of 07/01/2010 to 06/30/2011

Claim # [REDACTED] for \$654.12 for the period of 07/01/2010 to 06/30/2011

Claim # [REDACTED] for \$1,666.58 for the period of 07/01/2011 to 06/30/2012

Claim # [REDACTED] for \$294.00 for the period of 07/01/2011 to 06/30/2012

Claim # [REDACTED] for \$3,661.19 for the period of 07/01/2012 to 06/30/2013

Claim # [REDACTED] for \$1,048.59 for the period 07/01/2012 to 06/30/2013

Claim # [REDACTED] for \$4,761.34 for the period of 07/01/2013 to 06/30/2014

Claim # [REDACTED] for \$687.59 for the period of 07/13/2013 to 06/30/2014

(Exhibits R22, R24, R27, R28, R30, R32, R35, R36, R38, R40, R42, R44)

5. The first claim for each of the above stated overpayment periods was for Petitioner. The second claim for each overpayment period was for Petitioner's children. (Testimony of Ms. Hazley)

6. The Petitioner filed an appeal that was received by the Division of Hearings and Appeals on June 19, 2014. (Exhibit P1)

7. During the times in question, Petitioner lived at the address indicated above, under Parties of Interest. (Testimony of Petitioner)

8. The Petitioner is the sole owner of that property and has been so since November 2003. (Testimony of Petitioner; Exhibit R59)

9. Petitioner and her husband, [REDACTED], were married on June 25, 2005. (Testimony of Petitioner; Exhibit R62)

10. Two years into the marriage, Petitioner and her husband had marital difficulties stemming from his infidelity. (Testimony of Petitioner; Exhibits P2, P5 and P6)

11. [REDACTED] moved out of Petitioner's residence, but continued to use her address as a mailing address. (Id.)

12. ■ signed a rental lease agreement for an apartment on February 1, 2011, with ■ as his roommate. (Exhibit P7)
13. ■ then moved in with ■ sister, when ■ secured low income housing sometime around March 2013. (Exhibit P6)
14. ■ returned to Petitioner's home around March 2014. (Testimony of Petitioner; Exhibit R52)

DISCUSSION

An "overpayment" occurs when BadgerCare+ benefits are paid for someone who was not eligible for them, or when BadgerCare+ payments are made in an incorrect amount. Some examples of how overpayments occur are concealing or not reporting income, failure to report a change in income, and/or providing misinformation at the time of [application](#) regarding any information that would affect eligibility. *Wis. Stat. § 49.497; BadgerCare+ Eligibility Handbook (BEH) § 28.1.*

The agency is required to initiate recovery of BC+ overpayments, if the incorrect payment resulted from applicant/member error; fraud/intentional program violation or member loss of an appeal. *BEH+ §28.2*

Per BEH+ §28.3, overpayments may not be recovered under the following circumstances:

1. The member reported the change timely, but the case could not be closed or the benefit reduced due to the 10-day notice requirement.
2. Agency error (keying error, math error, failure to act on a reported change, etc).
3. Normal prospective budgeting projections based on best available information.

"The benefit recovery period for incorrectly paid benefits shall be limited to one year prior to the date that the overpayment is discovered." *Wis. Admin. Code §DHS 2.04(1)(b)*

In the case at hand, the agency was made aware of a potential overpayment on May 12, 2014. As such, the right of recovery only extends back to May of 2013.

Was ■ living with Petitioner between May 2013 and March 2014

In a Fair Hearing concerning the propriety of an overpayment of benefits, such as this, the agency has the burden of proof to establish that the action taken by the county was proper. Petitioner must then rebut the agency's case and establish facts sufficient to overcome the evidence of correct action by the agency.

In the case at hand, the agency asserts that ■ was living with Petitioner between May 2013 and March 2014. As such, he and his income should have been considered in determining Petitioner's financial eligibility for BadgerCare+ benefits.

Petitioner contested the claim that ■ was living with her during the entire overpayment period.

These five exhibits bore dates from between May 2013 and January 2014:

1. A CCAP print out showing that someone reported GS's address as being the same as Petitioner's address, as of May 20, 2013. (Exhibit R97)
2. A report from the Wisconsin Department of Transportation (DOT) indicating that ■ applied for a vehicle title for a 2011 Honda on November 18, 2013 and listed his address as Petitioner's address. (Exhibit R103)
3. A KIDS print out showing that ■ updated his address on 12/4/13 to Petitioner's address. (Exhibit R100)

4. A New Hire Information Print out showing that MPS listed ■■■'s address as Petitioner's as of December 4, 2013. (Exhibit R101)
5. A CCAP printout showing that someone reported ■■■'s address as Petitioner's address on January 27, 2014. (Exhibit R102)

This case is a close call. The foregoing documentation shows what Petitioner does not dispute, that ■■■ used the Petitioner's address. He clearly did so, a lot. Given that Petitioner and ■■■ were married, the agency's decision to question their living arrangement is understandable. However, Petitioner offered testimony that ■■■ and she were estranged during this time and no longer living together. Petitioner's testimony is corroborated by the fact that the home is deeded solely in her name (Exhibit R59), by a lease signed by ■■■ in February 2011 for another residence (Exhibit P7) and a notarized statement from ■■■'s subsequent landlord. (Exhibit P6)

Further, there is no evidence that ■■■ made payments towards the mortgage, property taxes, utilities or repairs on the home during the time in question. There is no documentation showing that Petitioner and ■■■ filed joint income taxes or claimed each other as dependents on their W-4s. There is no indication in the record that ■■■ kept most of his possessions at Petitioner's home between May 2013 and March 2014. Further, there is no indication that there were any children born to ■■■ and the Petitioner before or since their marriage in 2005.

Based upon the foregoing, I find that the agency has not met its burden to prove that Petitioner was living with ■■■ between May 2013 and March 2014.

March 2014 through July 2014

The agency again contends that the Petitioner was financially ineligible for BadgerCare+ benefits between March 2014 and July 2014 when taking into consideration, ■■■'s income.

The non-MAGI (Modified Adjusted Gross Income) BadgerCare test group consists of, "the primary person and any individuals living in his/her household whose income and/or needs are considered when determining financial eligibility." BEH §2.31

If the primary person is a caretaker relative of a child under age 19 or the spouse of a caretaker relative of a child under age 19, the BC+ Test Group will include the following individuals:

1. The caretaker relative,
2. The caretaker relative's spouse,
3. The child under age 19 who is under the care of the caretaker relative,
4. A parent of the child, if the caretaker relative has legal custody of the child, and
5. Any essential person ([2.3.1.2](#)).

BEH §2.3.1.1

Thus, if Petitioner and her spouse were living together, he would have needed to be included in her household.

Under MAGI rules (effective for new eligibility determinations made April 2014 or later), married couples are treated as follows:

Married individuals who are living together are always included in each other's group size, even if they are filing taxes separately. If a married couple is living apart but filing jointly, the couple is included in each other's group size. If the married couple is living apart and filing taxes separately, or are not planning to file taxes, do not include them in each other's group size.

BEH §2.3.2.1

Under non-MAGI rules, changes in income that result from incremental increases between 100%, 133%, 150%, 185%, 200%, 250%, 300%, 350% and 400% FPL must be reported by the 10th of the month following the month in which total income exceeded its previous threshold. *BEH §27.3* Under MAGI rules, the income thresholds are 100%, 133%, 156%, 191%, 200%, 250%, 306%, 350% and 400% FPL. *Id.*

Under either MAGI or Non-MAGI rules, changes in household composition must be reported within 10 days. *BEH §27.2*. Petitioner estimates that ■ moved in with her around March 2014. (Exhibit R89) Thus, she needed to report this change sometime around March 10, 2014. The Petitioner testified that she did not report this change as required.

Through March 31, 2014, for adults to be eligible for BadgeCare+, they needed to have income at or below 200% of the Federal Poverty Level (FPL). *BEH §16.1.1* Children had no income limit. As of April 1, 2014, adults needed to have income at or below 100% of FPL; children had an income limit of 300% FPL under non-MAGU rules and a limit of 306% of FPL under MAGI rules. *Id.*

"In general all available gross income is counted when determining BC+ eligibility under non-MAGI rules for existing BC+ members with a filing date prior to February 1, 2014." *BEH §16.1.2*

Under MAGI Rules, "all taxable income is counted when determining BC+ eligibility." *BEH §16.1.2* Thus, under MAGI Rules deductions from household income are allowed for pre-tax deductions that are taken out of the individual's paycheck on a pre-tax basis, such as health insurance, health savings accounts, retirement contributions, parking and transit costs, child care savings accounts contributions and group life insurance payments. *BEH §16.3.2* Certain tax deductions from IRS form 1040 will also be allowed. *See BEH §16.3.3*

During the time in question, Petitioner's household consisted of seven people, including her spouse. 200% of FPL for a household of seven people was \$6005.00 and 100% of FPL was \$3002.50. *BEH §50.1*

Exhibit R117 is a Work Number print out showing ■'s earnings from his job with the City of Milwaukee. According to that exhibit, Petitioner received a paycheck on March 13, 2014, with gross earnings of \$2,045.71 and he received a paycheck on March 27, 2014 with gross earnings of \$1,706.78. In addition the State Wage Record, indicates that ■ earned \$2962.96 from Milwaukee Public Schools, during the first quarter of 2014, which would work out to be an average of \$987.65 per month. (Exhibit R113)

■'s total earned income for March 2014 was $\$2,045.71 + \$1,706.78 + \$987.65 = \4740.14

According to the State Wage Record, Petitioner's first quarter earnings for 2014 totaled \$998.00, which would work out to be an average of \$332.66 per month.

Totaling ■'s earned income with Petitioner's earned income we have $\$4740.14 + 332.66 = \$5,072.80$.

Petitioner's child apparently received \$413.00 per month in social security income. (Exhibit R89) This would bring Petitioner total household income to \$5485.80. This is below the 200% FPL, \$6005.00 income limit for a household of seven. As such, the Petitioner was still financially eligible for BadgerCare+ in March 2014. Assuming Petitioner was otherwise non-financially eligible for benefits, Petitioner would have needed to pay a premium, as her income was clearly between 133% and 200% of FPL, at the time. *See BEH §19.1*

It should be noted that [REDACTED]'s pay stubs were not provided at the hearing, so there is no way to know if there were any allowable pre-tax deductions from income.

For the months of April, May and June 2014, there is no documentation showing what earned income, if any, Petitioner had during this time.

[REDACTED]'s earned income from his job with the City of Milwaukee for April 2014 totaled \$3370.45, and his income from that same job totaled \$3358.72 in May 2014. This, alone, put the Petitioner's household over the 100% FPL income limit of \$3002.50. (Exhibit R117) Thus, the agency correctly determined that the Petitioner was overpaid BadgerCare+ benefits, for herself, during the months of April and May 2014.

There is no income information for the month of June 2014. As such, there is no basis upon which to find the Petitioner was financially ineligible for BadgerCare+ in June 2014.

The Alleged Overpayment of Benefits for Petitioner's Children

Petitioner's household income was below 200% FPL for a household of seven, in March 2014. As such, the children were financially eligible without a premium. *See BEH §19.1* According to the agency's calculations, no premium was due for the children for the months of April, May and June 2014. (See Exhibit R-20) So there is no overpayment for the children between March 2014 and June 2014.

Petitioner should note, that at this time, the agency's case was based upon their belief that she was financially ineligible for BadgerCare+ benefits –meaning her household income was too high. Petitioner should be aware that the agency might continue its investigation and determine that she was ineligible for non-financial reasons, such as access to other health insurance through her spouse. Should that happen, the agency will have to reissue overpayment notices to the Petitioner and if she disagrees with the determination, she will have to file a NEW appeal.

CONCLUSIONS OF LAW

1. The agency may not collect an overpayment of BadgerCare+ benefits pre-dating May 2013.
2. The agency correctly determined the Petitioner was overpaid benefits in March 2014, but the amount of the overpayment needs to be re-determined.
3. The agency correctly determined that the Petitioner was overpaid benefits in April 2014 and May 2014.
4. The agency did not meet its burden to prove the Petitioner was over the income limit for June 2014.

THEREFORE, it is

ORDERED

That the agency **rescind** claim numbers:

██████████ for \$2,751.56 for the period of 07/01/2008 to 06/30/2009

██████████ for \$505.00 for the period of 07/01/2008 to 06/30/2009

██████████ for \$2,646.36 for the period of 07/01/2009 to 06/30/2010

██████████ for \$400.00 for the period of 07/01/2009 to 06/30/2010

██████████ for \$2,022.43 for the period of 07/01/2010 to 06/30/2011

██████████ for \$654.12 for the period of 07/01/2010 to 06/30/2011

██████████ for \$1,666.58 for the period of 07/01/2011 to 06/30/2012

██████████ for \$294.00 for the period of 07/01/2011 to 06/30/2012

██████████ for \$3,661.19 for the period of 07/01/2012 to 06/30/2013

██████████ for \$1,048.59 for the period 07/01/2012 to 06/30/2013

██████████ for \$687.59 for the period of 07/13/2013 to 06/30/2014

The agency shall re-determine the amount of the overpayment for March 2014, based upon the premium due for Petitioner's benefits.

The agency shall then amend claim number ██████████ and the manual overpayment notice issued on June 4, 2014, to reflect overpayments for the months of March, April, and May 2014 only.

The agency shall take all administrative steps necessary to complete these tasks within 10-days of the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

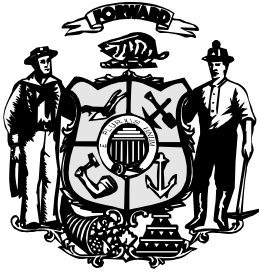
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 5th day of September, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 5, 2014.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability